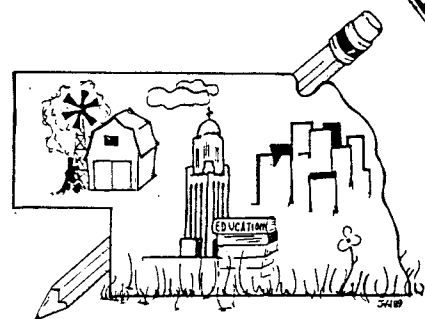


The Nebraska Observer

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formerly WHAMO

But Orr Officials Clear Path in Nebraska

North Carolina Denied Permits to U.S. Ecology

by Lynn Moorer

On Aug. 18 and 21 this reporter examined State of North Carolina documents in the Department of Human Resources' Radiation Protection Section in Raleigh.

Concerned citizens in Nuckolls, Nemaha, and Boyd Counties paid for the trip, as well as for photocopies of more than 600 documents detailing North Carolina's investigation of US Ecology.

Radiation Protection Section Deputy Director Mel Fry said that since North Carolina's 1986 decision to deny US Ecology an air discharge permit and a radioactive materials license, many interested persons, including a national television news producer, have gone through records contained in four boxes within the department.

Overview

Striking parallels emerge between US Ecology's performance during its two-year attempt to gain permission to do business in

North Carolina and its performance in Nebraska.

In 1986 the State of North Carolina twice rebuffed US Ecology applications to build and operate a commercial low-level radioactive waste incinerator in Bladen County. US Ecology's application required approval by two state agencies--the Department of Natural Resources and Community Development, Division of Environmental Management, which was responsible for issuing the air discharge permit and the Department of Human Resources, Radiation Protection Section, which was responsible for issuing the radioactive material license.

Like the above-ground low-level radioactive waste and hazardous waste dump proposed in Nebraska, US Ecology's plan for operating the radioactive waste incinerator was the first of its kind, relying upon

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Kaufman (right) challenges an answer given by Nebraska Civil Defense radiological officer Jerry Allen, during a four-hour public information meeting in Nuckolls County Nov. 8.

Rail Safety: Can UP Handle It?

by Frances Mendenhall

Larry Guenther would not advise others to work for the Union Pacific Railroad because "the railroad hypes safety, but they don't practice it." (Guenther was injured on the job. His story is on page 9.)

Mike Walsh, CEO of Union Pacific Railroad, underscores the importance of rail safety by attending funerals of employees killed in service, telling the troops ahead of time, "I don't like funerals."

In the 10-year period between 1976 and 1985, 485,366 railroad employees such as Guenther were injured, nationwide, and 861 were killed, according to figures from the National Safety Council and the Federal Railroad Administration, as cited in *Railroading the Public Safety*, a publication by Illinois Public Action Council. In the same period, 12,531 non-employees were killed and 65,175 were injured.

UP's Director of Public Relations John Bromley said, "We want to be fair to our employees, we don't want to hurt them. As human beings, we don't want to run a business that way."

UP is the nation's No.1 hauler of hazardous cargo (see story, page 9), carrying chemicals needed to serve a wide variety of economic needs, but which are also agreed to be as dangerous as the substance that

leaked in Bhopal five years ago, killing thousands. The company is second in revenue and size--Burlington Northern is the largest and CSX is the most profitable. Bromley cites record profits last year or so. According to him, Union Pacific's most recent yearly gross revenues were \$4.2 billion.

Condition of the Plant

UP is putting \$500 million per year into plant, and in "better shape than at any time since WWII" according to Bromley. The company spends \$250 million per year on track maintenance.

Charles Faulder, rail car inspector for the Nebraska Public Service Commission (NPSC) doubts this. According to Faulder, there were more defects in 1988 than when he began in 1979, and more violations this year than all the other years combined. It appeared to Faulder that UP's budget was tight or that possibly they needed more carmen (inspectors for the railroads themselves).

The number of employees on UP's payroll is down (although their carloadings are up).

Ninety percent of reported rail deaths are grade crossing accidents, not crewmen hurt in collisions or passengers hurt in derailments, according to Bromley. "Since we've eliminated cabooses our on-train injuries

have dropped dramatically because the bulk of our injuries on train crewmen were happening on cabooses."

Huge Executive Salary Incentives

CEO Mike Walsh and other top execs (to be selected by Corporation CEO Drew Lewis and a committee from the board of directors) of Union Pacific stand to make enormous bonuses based on a deal authorized by their board. If UP stock stays above \$100 per share for 60 days any time before April 14, 1993, they divide about \$15 million. Bromley said this potential bonus is often brought up at company town hall

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Thanks for the Best Ball Ever, and a Great Year

by Frances Mendenhall

Everybody knows that Nebraska Observer supporters are a special group, but they outdid themselves in class pulling together the Counter Press Club Ball last month.

It's hard to say which part of the show was the best, but if you haven't seen Marion Carmichael sing "You Picked a Fine Time to Leave, Mrs. B," complete with babushka and proper Jewish accent, you haven't lived. Of course, Marge Higgins' rendition of "Bye, Bye, Wadman" was also a hoot. And Lynn Mooror took at a tasteful shot at the guv with "There's a Sucker Born Every Minute," which surprised many of us who didn't know she was actually able to remember things learned from her undergraduate music major, while she is keeping all those facts straight in her head about US Ecology. We had thought she was pretty amazing.

Which is why we couldn't resist giving Lynn the Third Annual Upstream Swimmer Award. Lynn has fought longer and harder, and against more stonewalling, for simple access to information that citizens need than anyone else I can think of. I don't care if she is one of us, I couldn't stop myself from honoring her with our plaque, applause, and thanks. We hope she stays strong and keeps shining the light.

P.S. If Harold Andersen should follow suit and give Fred Thomas an award, I will discreetly refrain from criticizing him for the conflict of interest. By the way, has anybody seen Fred covering US Ecology lately?

To those of you whom I haven't thanked and told already, yes we did make a little money. We are able to equip ourselves with modems, get on an alternate wire service, add PostScript capabilities to our printer, probably fund a couple of special outreach mailings, and still have enough cushion to

survive the next month.

Who Sent the Flowers?

Some kind person sent a wonderful bouquet of red carnations which graced the stage at the ball. It had no card, and no one knew where it came from, or maybe they weren't saying. Whoever you are, *Thank*



You! The flowers looked just great and we liked them a lot.

The Time For Giving

OK, now what are you going to get your father-in-law now that he has all the golf clubs he needs? An ugly necktie? Noooo. Another pair of mittens? Too ordinary. Why not shake him up and get him started reading the Nebraska Observer? It is a gift he will enjoy all year long—either that or he will permanently ban you from his presence and fill our mailbox with poisonous notes. We only print the good stuff. Either way, though,

it could make your life better and it certainly would make our life better.

Other Mailing Lists

We converted all our mailing-list data to a different program last month and in the process lost the flags I put on people who don't want their names given to other groups. Actually, that usually wouldn't matter, because we almost never give our list to others, but next month the Nebraska Civil Liberties Union gets one shot at it. Whoever (I think there were two people) wanted their names protected from folks like the NCLU, please come forth and identify yourselves to us—again. This time we'll get it right.

More on ENCOR and Access to the Unicameral

Last month the Supreme Court decided that ENCOR could not require AIDS testing of its employees.

The high court let stand a lower court ruling which prevented the Eastern Nebraska Community Office of Retardation from mandatory testing of employees who came into direct contact with mentally retarded patients.

And our battle to be treated like other members of the press in the Nebraska Unicameral has come to a happy end. The Executive Board of the Legislature rejected a proposal that would have barred certain members of the news media (us) from the floor of the Legislature during regular sessions. Roses to Sens. Barrett, Schmit, and Weihing. Thorns

to Sens. Richard Peterson, Labedz, and Baack.

NCLU's Freedom of the Press Award

Nothing like it has ever happened to me before (and may never again). The



Photos: Anthony Carr

Nebraska Civil Liberties Union awarded me its "Freedom of the Press Award" at its annual banquet. The many people who help do the work of this publication should all take lots of bows. I am grateful to you all, to Vard Johnson for virtually everything he said about me, and to the NCLU. As far as my work is concerned, it just goes to show, even a blind hog occasionally finds an acorn. Thanks to all for a good year.

Observer Deadlines

The next issue of the Nebraska Observer will come out January 3. We must receive your story ideas by December 15. Copy is due Dec. 21. Story ideas for the February issue are due Jan 15. Copy is due Jan. 22.

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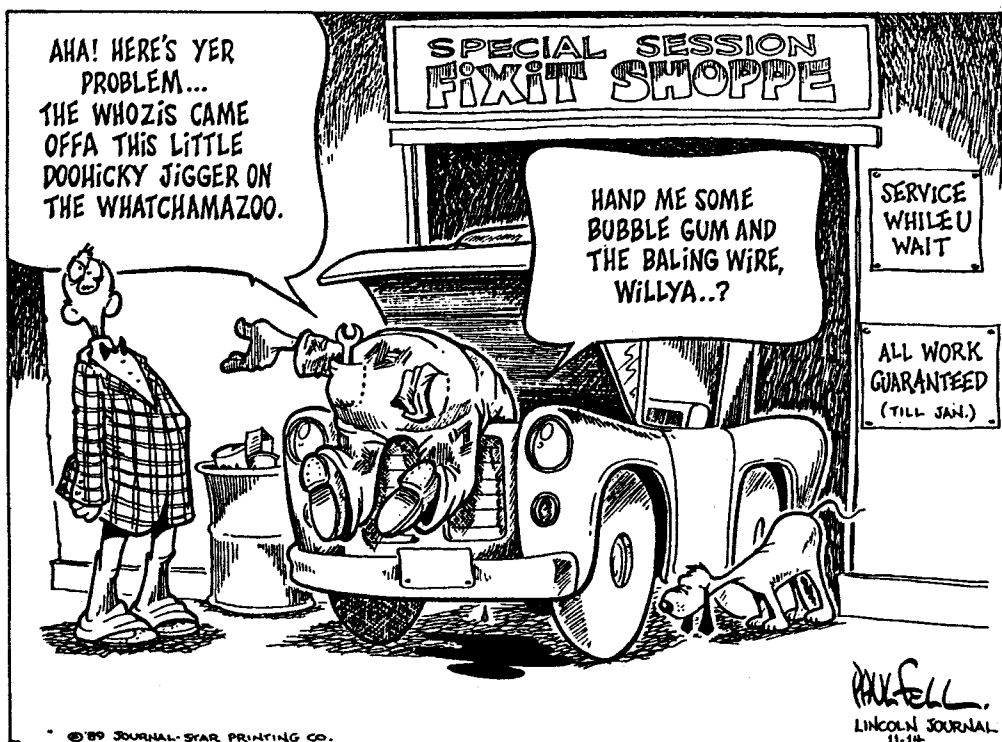
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As the Economy Cools...

by Don Macke

In the recent edition of *Business in Nebraska* (UNL's Bureau of Business Research, 11-89 Edition) the "State Economic Scoreboard" highlights the changing winds within Nebraska's economy. Both motor vehicle and retail sales are down, building activity is down and employment is off. Nebraska's nationally low unemployment rate continues to be more a function of a shrinking labor pool (considerable outmigration of Nebraska workers) than expanding employment opportunities.

The worthless value of the unemployment rate as an indicator of state economic well-being is further illustrated by the groundbreaking work of the Nebraska Department of Labor in the mid-1980s and more recent work by the state's Small Business Development Center. Both works highlight the substantial levels of underemployment (people working fewer hours than they want or working at a job for which they are over-qualified) present in the state.

For some time the signs of economic moderation in Nebraska have been apparent. Despite all the rhetoric from the Administration about Nebraska's booming economy because of LB 775 and other tax incentives, the fact continues to be that Nebraska's recent economic expansion was due to a whole host of influences which are now changing.

Chief among the factors driving Nebraska's two-year economic expansion include a relatively strong national economy, record levels of farm spending, strong retirement spending, continued growth in health care (largely due to older Nebraskans), a good year in the travel industry, and

a rebound in manufacturing.

While the national expansion continues, its vigor is weakening as the months tick by. This national slowdown, coupled with declining farm income and spending, strongly suggests that Nebraska's economy will grow at below the inflation rate and possibly stagnate in late 1990.

Nebraska's Fiscal Outlook

After nearly two years of state tax receipts regularly exceeding Department of Revenue forecasts, Nebraska experienced an \$11 million shortfall (actual vs. projected receipts) in October. While the Administration maintains that this is just a "blip," the cooling off of the state's economy suggests a much different conclusion.

Nebraska's economic-forecasting models are generally incorrect when predicting a course change because they are highly dependent upon past trends to predict future trends. For example, would any car driver operate a car based on the previous pattern of the road without taking a look down the road to see what is coming?

The flaws in our economic models remind me that economics is often called the dismal science, perhaps with just cause. An engineering friend of mine reminded me of society's frustration with this kind of economics by telling the joke, "What do four economists with cement up to their necks tell us? There is a shortage of cement."

In the months ahead, actual receipts will begin to tell us just how soft the state's economy is. Unlike last year when the Legislature and the Governor had real problems spending all the state's taxes, in 1990 the specter of spending cuts may loom.

Continued on page 5

Unicam Votes Down Corporate Tax Increase

by Dave Landis

Senator Landis represents District 46 in the Nebraska Unicameral.

Quick post-mortems of the recently completed special legislative session have peppered the editorial pages of Nebraska newspapers this week. From an insider's perspective, I'd say the forces of the status quo prevailed. Those who always win, won some more. We did not opt for change, we choose a double helping of existing tax policy rather than striking out for a new balance.

'...when the smoke cleared, what did the special session do? It narrowed the tax base and put more pressure on real property taxes.'

Railroads have a special privilege from Congress to be exempt from all the broadest-based state taxes. Our personal property tax system is not broadly based since we have already exempted many others. So, the railroads have gotten a \$12 million exemption first by court order and now by legislative action. No one at the state level can stop this without putting all personal property tax on the tax rolls.

The special session's bottom line is that someone else will have to pay the Union Pacific's taxes. There were two choices available to the Unicameral: (1) Stay within the Governor's call, and put the \$12 million on the back of real property taxpayers; or (2) get the Governor to expand the call and raise the corporate income tax. I tried the latter by offering a 16 percent corporate income tax increase. I lost. The forces of the status quo, the business and corporate community, won again; a new exemption for business passed, the average homeowner pays the tab. The same old same old.

Why was the second option better? Because the real property tax base is vastly overburdened and the corporate income tax is underused. Here's what our \$350,000 Syracuse comprehensive tax study said about corporate taxes: "The Nebraska corporate income tax has a relatively low tax burden when taxes are compared to personal income, exhibits low effective tax rates when tax shifting is taken into account, and has low or average marginal tax rates depending

on the comparison state used."

We rank 44th in corporate income tax collections in the country. Our real property tax is the fourth highest. Our corporations contribute about 6 percent of the state's revenues. The average rate around the country is 9 percent.

What about the argument that corporate tax is really another tax on the public and double taxation at that?

Studies show a good portion of corporate income taxes are paid by shareholders in lower profits rather than direct price increases to the public. Besides, corporations use government services, the police protect them, the firemen put out their fires, they use government research and the students of our schools to make profits. They consume services, they should pay taxes.

Every politician will tell you there are two things wrong with Nebraska's tax system: our tax base is too small and our real property taxes are too high. So when the smoke cleared, what did the special session do? It narrowed the tax base and put more pressure on real property taxes. Like I said, the same old same old.

Unicameral Votes on LB 6 To Increase Corporate Taxes In Nebraska By 16 Percent:

Ayes (19):

Baack, Bernard-Stevens, Conway, Haberman, Hall, Hartnett, Landis, Lynch, McFarland, Moore, Nelson, Robak, Rogers, Schellpeper, Schimek, Smith, Weihsing, Wesely, Withem.

Nays (24):

Abboud, Ashford, Barrett, Beck, Beyer, Byars, Coordsen, Crosby, Elmer, Goodrich, Hannibal, Hefner, both Johnsons, Kristensen, Labedz, Lamb, Langford, Lindsay, Peterson, Pirsch, Schmit, Warner, Wehrbein.

Present, not voting (2):

Korshoj, Scofield

Excused (4):

Chambers, Chizek, Dierks, Morrissey

Farm Groups Want Ag Secretary to Resign

by John Dittrich

John Dittrich is policy director for the Nebraska League of Rural Voters. He is 34 years old and farms near Meadow Grove in northeast Nebraska.

Secretary of Agriculture Clayton Yeutter was recently in Lincoln to accept a Nebraska Agricultural Achievement Award. But the day before his arrival a press conference was held at which 12 farm and rural advocacy groups severely criticized Secretary Yeutter's proposed trade policies. The Nebraska League of Rural Voters called for his resignation because of his stand at the ongoing GATT (General Agreement on Tariffs and Trade) or international trade negotiations. Since the press conference, the Nebraska NFO (National Farmer's Organization) and the Catholic Rural Life commission have joined in calling for his resignation.

Why all the fuss over an intelligent, personable Nebraska native supposedly trying to rid the world of agricultural subsidies? Because the U.S. position that Yeutter is promoting at the GATT negotiations goes far beyond the elimination of export subsidies, which the League of Rural Voters supports. Simply put, Secretary Yeutter's trade proposal is roughly equivalent to a proposal by a Secretary of Commerce to eliminate the minimum wage, 40-hour work week legislation, and all health and safety regulations designed to protect American workers.

A Secretary of Commerce promoting such a proposal in order to make American industry "competitive in world markets" would be quickly and severely chastised. However, since agricultural policy is poorly understood by the majority of Americans, Clayton Yeutter has been able to sell a similar proposal for agriculture with some success.

To understand the negative aspects of the Yeutter/Bush administration trade proposal, some basic understanding of farm policy is required. There are two basic areas to cover:

- 1) Conflicting interest groups in the farm policy debate
 - 2) Origination and working structure of U.S. farm policy,
- An explanation follows.

Conflicting Interest Groups

Many people believe that all in the ag policy arena have similar interests. Not true. There are four major player categories. Their classifications and interests follow:

Farmers or Producers

As producers, farmers' primary desires are stable and profitable farm prices and stable and reasonably priced production input costs. As with any industry, stable and profitable

prices depend on supplies in balance with demand. This presents a special problem. Since farmers produce undifferentiated products (grain, meat, milk) over wide geographic areas, they are unable to individually affect supplies. If a Nebraska farmer sees that predicted total demand is 10 percent less than the projected U.S. production, he cannot individually reduce his production 10 percent and have any significant impact on total supply or price. Indeed, because of weather he does even know what his production will be until year end. Therefore, without outside regulation, he will produce on his farm to the maximum.

Farm Input Suppliers

This category includes companies that produce and sell farm inputs such as machinery, seed fertilizer, pesticides, etc. These interests desire high levels of farm production, which mean more inputs sold. Some of them, such as fertilizer and chemical manufacturers, feel low farm prices will also benefit them, since farms will be forced to increase output with fertilizer and chemicals to make up for lower prices. However, small-town retailers who directly sell inputs are more interested in stable farm production and higher farm prices. This allows them to predict required inventories and to increase their profit margin. Nobody sells new tractors to farms with no money, no matter how much the farmers are producing.

Food Processors and Food Exports

As buyers of farm production, these interests desire low farm prices and high farm production (surpluses mean low farm prices and storage payments). They also want periodic price volatility. Short-lived jumps in farm prices allow consumer price increases, without price decreases when farm prices fall. As resellers of farm production, these interests want high consumer prices and minimal food safety regulations.

Most companies in this category are very large multinational corporations. This means that without regulation, they can buy on an international basis, filling their needs for a given period from whatever geographic area or national entity has the cheapest prices, regardless of quality. This leaves farmers with no ability to negotiate fair prices.

Concentration in this industry has always been high, but has rapidly increased in the 1980s. Some of the largest corporate mergers and leveraged buyouts have occurred here, sharply reducing competition. Many of these mega-companies are now not only exporters and processors, but also large suppliers of farm inputs. Two of the largest companies are ConAgra and Cargill. Of course, a very high level of political influence comes with the enormous economic power of these companies.

Consumers

Consumers desire low, stable food prices and stable supplies without risk of shortage. They also want healthy, safe food supplies. Their interests are usually at odds with the processors' interests, since these companies want to charge as much as possible, even as they obtain lower farm prices. Decreasing competition has allowed this to occur. The farmers' share of the retail food dollar is now at the lowest level in history.

Origination and Working Structure of Farm Policy

Present farm policy has its roots in the social and regulatory legislation that originated in the economic turmoil of the 1930s, as did many of the programs we now take for granted, such as Social Security and minimum wage legislation.

Congress addressed the special problems farmers had with managing supply and maintaining fair farm prices. It addressed the supply problems with legislation requiring farmers to periodically reduce production to avoid costly surpluses, in exchange for a system of minimum pricing for farm commodities. Over the years Congress also established a system of food resources. This system stored and held off the market farm production in good years for future use in bad years. This stabilized production for both consumers and farmers.

Minimum pricing was accomplished through a simple system (called the loan rate) that allowed farmers to hold production off the market if the prices paid by processors and exporters were below the minimum level. Market prices then had to rise to these levels in order for the buyers to obtain the production. The legislation also required food import controls, since without these the imports could be used to ruin the supply stabilizing aspects.

Since the program relied on higher market prices to provide farm income rather than direct subsidies, the farm programs were also cost-free until recently.

Processors, exporters, and to some extent farm input suppliers did not support this legislation. Through heavy lobbying, they have obtained the present farm policy. This policy still manages supply (quite poorly, however), but has lowered minimum prices and therefore market prices in most years to levels far below farmers' cost of production. The losses that farmers incur are then partially made up through direct subsidies. However, the beneficiaries of the subsidies are primarily the processors and exporters, who are allowed to buy farm production at levels far below cost. There has been no attempt to ensure that these cheap prices are passed on to the consumer. In fact, profits and food prices have steadily risen.

The results of these farm program

changes have been skyrocketing government costs and charges that "farmers" are being too heavily subsidized.

Now, back to Clayton Yeutter. Secretary Yeutter is a strong supporter of the low farm prices that present policy ensures. However, he wants to go down an even more damaging path. Through GATT negotiations he is backing a U.S. proposal to eliminate all minimum pricing, supply management and direct subsidy legislation now in effect in the U.S. and most industrialized nations. He wishes to eliminate such things as low-interest loans to beginning farmers, and curtail such things as the Rural Electrification legislation that allows reasonably priced power to be supplied to rural areas. He wants to end the ability of an individual county to restrict food imports for any reason, even health, unless an international panel of appointed scientists agrees to the restriction. He wants to eliminate language in the present GATT agreement that allows counties to restrict exports in "times of critical shortage."

In short, the U.S. proposal backed by Secretary Yeutter is an extremely radical proposal that many feel will primarily benefit processors and exporters. The result will be even lower farm prices (as even a recent USDA study concluded), much more unstable supplies, and continued and accelerating damage to Third World environments as they produce even more cheap food for export in an attempt to pay off their individual debts.

The GATT negotiations are occurring without public input. These proposed policies, when analyzed against information previously discussed, can only lead us to conclude that Secretary Yeutter represents a very narrow range of interests to the detriment of farmers, consumers and environmentally concerned people. Therefore, the Nebraska League of Rural Voters has called for Secretary Yeutter's resignation in order to alert farmers and the American public in the strongest terms how detrimental his policies will be if adopted.

'Clayton Yeutter needs to have his salary lowered to the salary of the lowest ag leader in the world...If it's good enough for producers to lower their standard of living, then it should be good enough for the secretary.'

—David Bosle, President
Nebraska National Farmers Organization

Visser Trial: NU Academics Not Compromised

by Polidoros C. Pserros

Last month, a four-man, three-woman jury decided that the rights of Mary Jane Visser, a former academic adviser in the general studies division and a 19-year employee of the University of Nebraska, weren't violated when she was fired in 1988. She had alleged that she was fired after she uncovered academic "irregularities" in the Cornhusker football program last year. NU official countered that neither National Collegiate Athletic Association rules nor university policies were violated and Visser was fired for her poor job performance.

Jurors were apparently persuaded by the testimony of Donald Gregory, her supervisor and the director of the general studies division. Gregory, who was named in the lawsuit, testified that Visser abused sick leave and professional leave and caused an unhealthy attitude in the office. And they apparently were persuaded by a co-worker who said, in reference to Gregory, after Visser received a written reprimand, she said she was going to "get that asshole." A second co-worker testified that Visser said she wanted to be fired so she could win a lawsuit.

An Omaha World-Herald editorial concluded that the eight-day trial, which began Nov. 1, showed that Visser had been vindictive in maligning the University of Nebraska, and that UNL had been able to strike a proper balance between academics and athletics.

But news coverage of the trial, particularly by the Herald's David Thompson and Tom Witosky of the Des Moines Register, painted a troubling, unclear portrait. The trial seemed to bring up more questions than it answered.

Nothing Was Decided

First, the basic claim -- UNL fired Visser after she conducted an investigation -- was dismissed by U.S. District Judge Warren Urbom when Visser couldn't show that it was her job to conduct the investigation. Urbom did allow two other claims -- her claim that she was denied her freedom of speech and her claim of sexual discrimination under Title VII of the 1964 Civil Rights Act -- to be heard in the case.

Visser's charges in fact were already being addressed. Gregory testified that during the 1987 fall semester he attended as a non-participant two meetings of a Faculty Senate committee investigating intercollegiate athletics, Thompson reported.

The committee discussed athletes taking more classes and correspondence work than other students were allowed to take, the practice of setting up special sections of health classes for athletes only, whether academic advisers' recommendations for summer school were being changed by athletic advisers, and whether students were

"cycling" -- chronically using summer schools to boost their grades.

Second, the case was not about whether there were irregularities in the football program but about whether the investigation caused the dismissal. As a result, much of the evidence on academic records was sealed and, except for slips of the tongue which implicated former All American Broderick Thomas, no names of student-athletes were given. The identities of these students were not disclosed to the public. The players and their records were third parties and subjected to limited scrutiny.

Visser's lawyer, Thom Cope, tried to link NU Coach Tom Osborne's anger at the investigation with her dismissal.

Vice-Chancellor James Griesen, who told Visser she was fired and was named in the lawsuit, and Frank Wagner, chairman of the Faculty Senate grading committee, both testified that they thought Osborne overreacted to the news that Visser mailed an athlete's transcript to the Faculty Senate.

Osborne testified that he was "very angry" about the disclosure, which violates federal law, saying during a telephone conversation with Wagner and a subsequent letter to Griesen that someone could get fired.

Cope asked Osborne how angry he was.

Osborne's response was, "I was angry, but I wouldn't say very angry," Thompson reported. But on further cross-examination, Osborne admitted that in a sworn pre-trial statement he said he was "very angry."

High Points of Testimony

Unlike last spring's Norby Walters-Lloyd Bloom sports agent trial in Iowa, which concerned federal fraud, extortion and racketeering, the players were parties in the trial; they were witnesses and their academic records were subject to scrutiny. The Walters-Bloom trial, covered by the Register's Witosky, prompted a scandal at the University of Iowa following the testimony of two former Iowa players.

Also, cross-examination by UNL lawyer David Buntain did not dwell on the questionable academic records that Visser spoke of during direct questioning. Lawyers tend to ignore adverse testimony during trials, which is the same way irrelevant testimony is treated, even though it may merit more attention. Following are comments on some of the evidence from the trial.

NCAA Rules and Student Athletes

NCAA, the intercollegiate athletics governing body, has rules that contort the academic behavior of athletes and officials alike.

Students who flunk out of school can be readmitted after two semesters, said Robert Furguson, UNL chancellor of student affairs, who was interviewed by the Lincoln Star after the Visser trial. He added that

those sensing difficulty can drop classes.

Student athletes, by contrast, are mandated by the NCAA to take 12 hours each semester to remain eligible to participate in athletics, Furguson said. Athletes, unlike other students, cannot drop courses to decrease their credit load in order to maintain their grade-point average.

This creates an obvious burden.

"Many athletes do work hard on sports during the fall and spring semesters, and sometimes they need summer school to get (academically) eligible," Osborne reportedly testified. In late 1987, the Faculty Senate disallowed summer school credits as a method of building up a GPA.

So what is happening? Neither Furguson in the Star interview nor those testifying in the Visser trial said how marginal student athletes are getting by. Are players now taking easy courses that have little to do with education?

Visser had suggested in her testimony that she thought it was irregular when several football players were allowed to play in the 1988 Fiesta Bowl after flunking out, although it is not against NCAA rules. Buntain challenged her. The following is excerpted from Witosky's account of the trial.

"I thought if you didn't pass any classes, you shouldn't be allowed to play," Visser answered. "I think it was kind of irregular, but I didn't know if it broke any rules."

Asked how she defined irregularity, Visser said: "Something that seems to be not appropriate for a college to do."

"But that's a matter of opinion, isn't it?" asked Buntain.

"Yes," answered Visser.

Disturbingly Similar to Iowa Case

The Walters-Bloom sports agents trial was about fraud, extortion and racketeering, and the Visser case in no way approaches that one. However, the two athletes involved in the Iowa trial, Ronnie Harmon and Devon Mitchell, have academic histories similar to those described in the Visser trial testimony. Mitchell flunked out at one point, but took a physical education class in the summer to be eligible to play. Mitchell, a liberal arts major, said his "priority was playing football," according to Witosky's account of the sports agent trial. "And to play football, I had to go to class and be eligible," Mitchell said.

Harmon, who changed majors three times, said athletic advisers told him which classes were the easiest to take.

Although Visser witnesses were prohibited from naming athletes, slips by Visser and others suggested that former NU All American Broderick Thomas had a questionable transcript, and Witosky learned from the court file that his transcript was subpoenaed from his Houston high school. An affidavit filed by Visser's lawyers named

All American defensive lineman Neil Smith as another student athlete with academic problems.

Like the two Iowans, these players were stars who helped their team win.

Eligible or Educated?

The trial of Mary Jane Visser documented difficult times for intercollegiate athletics. In a sense, it was reassuring: academics didn't appear to be capitulating.

The University of Nebraska's record of Academic All Americans is something it should be proud of: 28 Academic All Americans since 1972, twice as many as Stanford, the second-best college, with 14; and 122 Academic All Big 8 since 1972, almost twice as many as second-place Oklahoma, with 66. Nebraska allows scholar athletes to flourish.

But as long as the system is contorted to allow athletes to be "eligible" and not necessarily "educated," then the marginal student/terrific athlete faces a difficult future. This legal "victory" should not mean that school officials will let this situation continue.

Looming property tax crisis?

Nebraska's Economy Cools

Continued from page 3

For decades, Nebraska's property tax burden has grown more severe and inequitable relative to other states. Both real and personal property tax systems have major problems which have largely gone unaddressed by recent administrations and are further complicated by legislative actions which grant ever more select treatment for select taxpayers.

The solutions pressed forward during the recent special session of the Legislature largely represent stalling tactics in hopes that this issue will not explode before the 1990 elections.

In the coming months be prepared for more litigation against the state by various business interests. But don't worry. The average citizen who is equally discriminated against by this unfair tax policy probably will not litigate, since Nebraska does not allow class actions on tax matters. Few households or small businesses can afford to spend \$5,000 or more to challenge the system with less than that at stake -- so we endure.

In addition to more litigation, watch the Nebraska Supreme Court to see how far it may go in addressing these tax inequities. Finally, the major political question is whether this issue will come to a head before the 1990 elections and potentially affect the outcome.

US Ecology's N. Carolina Rebuff

Continued from page 1

unproven technology. Not only had such a facility never been built or operated, US Ecology had no experience in incineration of any type, let alone low-level radioactive waste incineration.

Like US Ecology's Nebraska promises that it "want(s) a site where there is receptance" and it will not "put the disposal facility where it is not wanted," in North Carolina US Ecology promised the company "would not locate in an area where it was not wanted." Despite strong opposition from citizens of the three counties closest to the site, thousands of signatures on opposition petitions, and numerous resolutions by local governmental bodies opposing the facility, US Ecology PR personnel said they "believed that the local opposition to the proposed incinerator was in the minority."

Like US Ecology's Rich Paton's discomfort in Nebraska discussing the company's abysmal record of leaks, contamination, and violations of laws and regulations, saying, "I think it is time to move forward and not look backward," George Kolbenschlager, US Ecology PR executive, said. "We are getting tired of hearing about US Ecology's operating record" in North Carolina.

Despite US Ecology's protests that its compliance record and record on fines and penalties compared favorably to anyone in the country, North Carolina decided US Ecology's operations history was so defective that, in order to protect state natural resources and North Carolinians from "assaults against their environment and human health," US Ecology would be denied the required permits.

The air emissions permit was denied after a technical review of US Ecology's proposal, a review of its ability to operate such a facility safely and its overall history of compliance with environmental rules.

Division of Environmental Management Director R. Paul Wilms noted: "Government agencies have ended up bearing tremendous expense to inspect, monitor and oversee the company's operations...." Wilms concluded:

"The inadequacies of US Ecology's current proposal coupled with the company's lack of experience in low-level radioactive waste incineration and its history of non-compliance with environmental laws preclude a determination that air pollution... will not result from this facility."

North Carolina's Radiation Protection Section investigated US Ecology's operating and management practices in depth, as well as its compliance history, over an almost two-year period. North Carolina state law allows licenses to be issued only after determining that all the applicant's (and its parent's) facilities have been operated in ac-

cordance with sound waste management practices and in substantial compliance with federal and state laws and regulations.

After visiting US Ecology facilities at Maxey Flats, Ky.; Sheffield, Ill.; Beatty, Nev.; and Richland, Wash., and amassing hundreds of state and federal documents, North Carolina concluded,

"This investigation revealed repeated violation of regulations and license requirements, many of which involved the conduct of unsound waste management practices and resulted in replacement of key management and other staff."

The Radiation Protection Section also determined that US Ecology's application failed to meet a North Carolina regulation that required "adequate qualified personnel with sufficient training and experience to assure that the proposed incinerator" would be operated "in such a manner as to minimize danger to the public health and safety or property."

USEcology reapplied for the air permit and asked for a review and a hearing on the radioactive materials permit. After North Carolina officials asked US Ecology to clarify its responsibilities under the federal Resource Conservation and Recovery Act (RCRA) relating to mixed waste, US Ecology withdrew its incinerator permit application in June 1986 "based on a number of business considerations."

US Ecology Project Engineer Richard Sauer explained:

"Given... excessive time constraints, and considering that the company has already been involved in the regulatory process for almost two years, US Ecology has elected to pursue other business activities."

The most significant parallel between US Ecology's experiences in North Carolina and Nebraska, of course, would be if Nebraska's Department of Environmental Control exercised the authority it possesses under Nebraska rules and regulations and refused to issue a license to US Ecology.

Title 194, Chapter 3, 009 says in part:

"A license for the receipt, possession, and disposal of waste shall be issued by the department upon finding that:

"009.02 The issuance of the license will not constitute an unreasonable risk to the public health and safety;

"009.03 The applicant is qualified by reason of training and experience to carry out the disposal operations... in a manner that protects health and minimizes danger to life, property and the environment."

Even the most cursory examination of US Ecology's past and current operations and its actions and statements in Nebraska suggests Nebraska's DEC, like North Carolina's environmental agencies, ought to say "No" to US Ecology.

by Lynn Moorer

An incredible dialogue about North Carolina's 1986 turndown of US Ecology culminated in State of Nebraska officials walking out of a Nov. 7 meeting in Nelson of the Nuckolls County Nuclear Waste and Hazardous Waste Monitoring Committee.

Committee member Hugh Kaufman, who represents the Village of Nora and works in EPA's hazardous waste program, was questioning Compact Commissioner Norm Thorson about his knowledge of North Carolina's finding that US Ecology had unsound waste management practices when Thorson, who served on a State of Nebraska committee which reviewed US Ecology's proposal in 1987, began an attack upon a document he said was "a cut-and-paste job."

The following exchange between Kaufman and state officials Thorson, DEC Director Dennis Grams, and Department of Health's Harry Borchert shows that while Kaufman sought information about the State of Nebraska's knowledge as to North Carolina's decision, Nebraska officials attempted to deflect discussion of the denial by questioning the validity of a document.

KAUFMAN: Mr. Thorson, were you aware that the State of North Carolina, a year before you reviewed the applications, found US Ecology to have unsound waste management practices and to be substantially noncompliant with federal and state laws and regulations? Were you aware of that investigation and those conclusions when you decided to go with US Ecology? Yes or no.

THORSON: A, I didn't decide. B....

KAUFMAN: Were you aware of this? (Holding up a document)

THORSON: B. I don't know what you have and I'm not aware of it. From what I've heard from... I certainly was not aware of it. (Thorson was handed the document.)

KAUFMAN: Mr. Grams, were you aware of the fact that the State of North Carolina would not issue a permit to US Ecology?

THORSON: If this is what I think it is, the State of North Carolina claims that it is not aware of it, has never been aware of it, and has claimed that this document is a document that has been put together as a cut-and-paste job.

KAUFMAN: Excuse me, Mr. Thorson, who in the state of North Carolina said that the State of North Carolina did not conclude that US Ecology had unsound waste management practices? I have a document signed by Dayne H. Brown, Chief, Radiation Protection Section, denying a go-ahead for the permit and you have a copy of that document. Now, who in the state denied the existence of this document?

THORSON: I haven't seen this document.

KAUFMAN: You haven't seen this document?

THORSON: I just told you I haven't seen this document. Is there an echo?

KAUFMAN: Yes, there is. That's what I'm asking you today. Mr. Grams, have you seen this document prior to going ahead with US Ecology? Yes or no.

GRAMS: I'm not aware... I've seen a document... a cut-and-paste document. I'm not aware how it was put together. I don't know if it's your document.

KAUFMAN: In other words, the monitoring committee of Nuckolls County did more research on this company than the

Officials Elsewhere Have a Less Than Rosy View of US Ecology

Details of US Ecology's record in Kentucky, Washington, Illinois, and Nevada, in addition to information compiled by the State of California, will be outlined in future issues. Following is a sampling of statements made by state officials as documented in North Carolina's Department of Human Resources, Radiation Protection Section files.

Maxey Flats, Ky. Site

"NECO's (US Ecology's) operation of Maxey Flats, from a health physics point of view, was marginal at best."

"It is (our) opinion... that NECO's (US Ecology's) primary function was to show a profit and that operating expenses were held to a minimum."

--Commonwealth of Kentucky, Department for Health Services

Beatty, Nev. Site

"On Oct. 23, 1979, the radioactive waste disposal site was ordered closed by the State as a result of barrels of radioactive waste being found buried outside of the site fence...."

--State of Nevada, Department of Human Resources

Sheffield, Ill. Site

"(A)ctivities were stopped by NECO (US Ecology) on Mar. 8, (1979) in disregard of its responsibilities as an NRC licensee.... (T)he (Atomic Energy) Act mandates... that no person can, in any manner, dispose of any right granted by a license without prior Commission review and approval."

--United States Nuclear Regulatory Commission

Continued on page 12

ka and North Carolina

Why North Carolina Refused US Ecology a Permit

state officials and we're not paid and you are. With the exception of the six-pack (six dump proponents on the committee).

BORCHERT: I'd like to point out for the record here that Mel Fry, the director of the radiation control program in North Carolina...

KAUFMAN: The deputy director.

BORCHERT: Told me that document does not exist in their files.

KAUFMAN: Mr. Richard M. Fry, dep-

uty chief--you're talking about Richard M. which is Mel Fry--sent me this document. I've got his signature and it says, "Here's the info we discussed on US Ecology yesterday." This is to Hugh Kaufman from Mel Fry. "To my knowledge there is no report or Attachment B. These were the only two documents issued." After I got this I called him up and he said, "Of course we're aware of this, Hugh, and I'll be happy to have somebody go through the three boxes of

documents that are the basis of this document."

And Lynn Moorner, at the expense of the public, went to North Carolina, met with Mel Fry, and he gave her access to all of the documents, and after reviewing the documents, we found US Ecology is even worse than North Carolina found and you weren't aware of it and you're being paid. You want to go to France--you go to France, Jay (Ringenberg of DEC) baby?--you go to

Maine, you go to South Carolina. You go everywhere but you don't go to North Carolina and you're lying about what Mel Fry said. Would you look at the document now?

BORCHERT: The document was a cut-and-paste job.

KAUFMAN: That's a lie, Mr. Borchert. Mr. Borchert, look at the document. (Borchert was presented the document for inspection by this reporter.)

BRENDA SMITH (reporter for *The Superior Express*): Mr. Borchert, Mr. Fry sent the same document to me. I also spoke with Mr. Fry on the phone and I don't think he's a goblin, sir.

(Despite urging by this reporter and Kaufman to examine the document's validity, Borchert refused to look at the document and rose to leave.)

KAUFMAN: Mr. Borchert, you're a liar. So is Thorson. And you're obstructing the government process.

The Exodus

Over objections from the audience and several committee members, the Nebraska state officials left the Nelson City Auditorium's stage and moved toward a side door to exit the building.

As Thorson hastened toward the door Nuckolls County resident Danny Corman shouted, "He hit me. He hit me." Corman said Thorson shoved him from behind while Corman was talking to a law enforcement officer in a corridor to the exit door.

A photograph snapped during the exodus showed Thorson's hands on Corman's ribs pushing him back toward the inside of the hall. Thorson denies shoving Corman.

Was There Really a Cut-and-Paste Job?

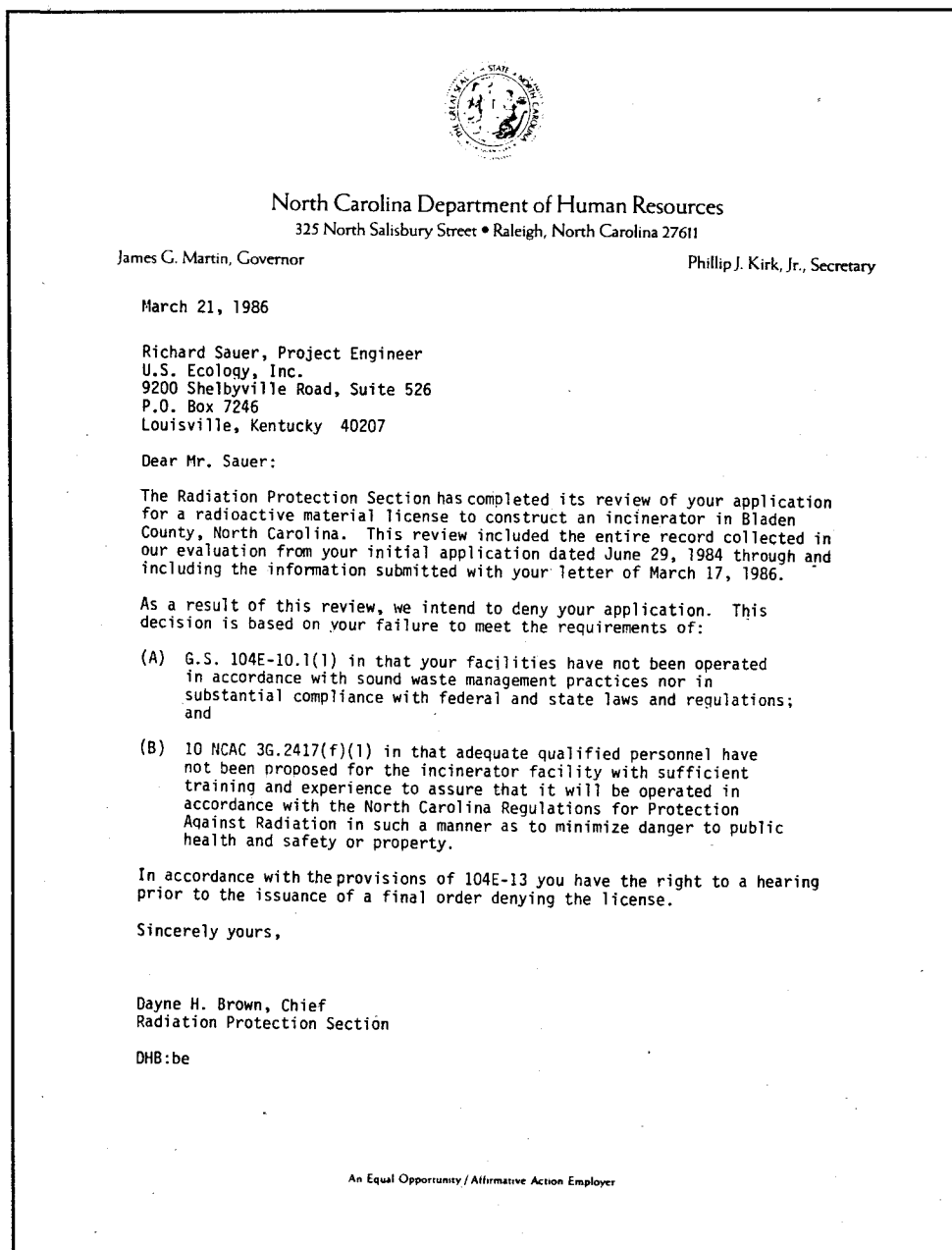
by Lynn Moorner

This reporter has examined a composite document detailing North Carolina's denial decision which appears to have been prepared as an exhibit or attachment to some larger document.

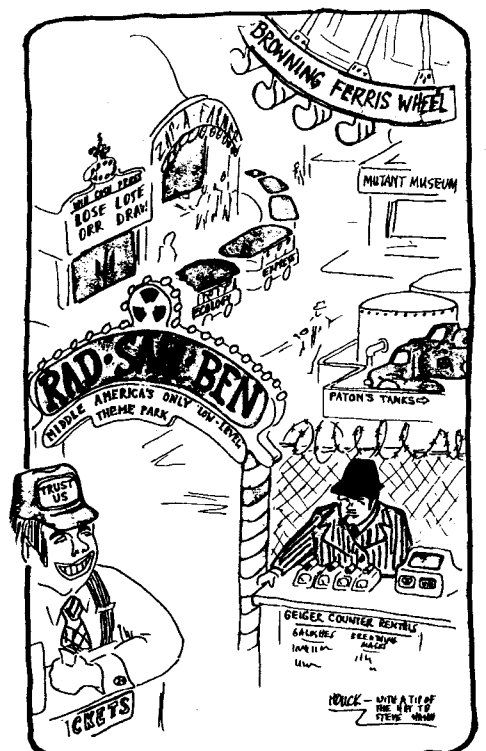
Its comparison to the documents found in the North Carolina files indicate the following: a Radiation Protection Section news release regarding the 1986 decision to deny US Ecology a radioactive materials license was printed on plain paper and attached to an official department statement printed on department letterhead. In an apparent effort to document the source of the news release, it appears that someone attached the Radiation Protection Section letterhead to the top of the plain-paper text of the news release. This altered document was labeled, "Attachment B."

The Mar. 21, 1986 letter (right) signed by Dayne H. Brown, Chief of North Carolina's Radiation Protection Section under discussion at the Nov. 7 meeting, contains much of the same information as "Attachment B," but is clearly not a composite document.

Nebraska state officials Norm Thorson, Dennis Grams, and Harry Borchert refused to look at or acknowledge the authenticity of the Brown letter under discussion.



This 1986 letter informing US Ecology of the State of North Carolina's intent to deny the company an application was called "a cut-and-paste job" by Nebraska state officials at a November 7 Nuckolls County Nuclear Waste and Hazardous Waste Monitoring Committee meeting. Harry Borchert, Director of Nebraska's Division of Radiological Health, said this letter didn't exist and refused to examine it when it was presented to him at the meeting. Borchert is responsible for regulating all radioactive materials licensees in Nebraska. Both the Lincoln Journal and the Omaha World-Herald had copies of this letter, but neither would acknowledge its authenticity, leaving readers unaware that the state had lied.



Rail Safety: Can the Union Pacific Handle It?

Continued from page 1

meetings in the general context of "obscene profits."

"The motivation is not there for the managers to defer maintenance, to do things that are unsafe on a short-term basis because when you do something like that on a short term...the short term isn't enough to get the stock market or the stock to cross that magic number. In fact the stock has never been that high."

Some, however, think Walsh is just the one who can get it that high. In his previous career with Cummins Engine Co., workforce reductions and price cuts were employed as a response to Japanese competition. Like Drew Lewis, his predecessor at UP, Walsh cut costs by eliminating positions in management, and, some say causing train service to deteriorate.

Inspections

The UP's John Bromley believes that the railroad is subject to "a lot" of inspections by state and federal agencies, both of which are doing a good job. But, he said, it is the company's own in-house inspections that can be depended upon the most. "It is in our best interest to make sure our locomotives work and our cars are safe and so forth. There is no reason for us to run defective equipment because we know we are asking for trouble. Not just because the government may catch us doing something that's wrong, but because it could cause a service interruption or hurt an employee or lose our business."

Less than 1 percent of cars passing through Nebraska are inspected by NPSC. NPSC has only two railroad inspectors for the entire state; one is in charge of track, the other (Faulder) of railroad rolling stock. FRA has no m p & e (motive, power and equipment) inspectors located here, but occasionally some come here from regional offices in Denver, Des Moines, and Kansas City. Faulder is sure that some defects and violations go uncited.

The most likely citation to be filed by the NPSC is a "defect," which warns the railroad, but allows them to make repairs without being fined. Using this citation, the NPSC in effect does the railroad's work for them; only if they ignore these defect citations are they cited for a "violation," and therefore incur a fine. It is much harder for

the NPSC inspectors to cite a "violation," because they must see the problem in motion. In a practical sense, this means they don't file many violations, because they usually cannot be sure of something they saw in motion and ordinarily would not have time to wait until the train is stopped to confirm it and write it up.

UP paid only 55 percent of its fines in fiscal year 1988 due to the mediation of settlements. The money goes to the Federal Railroad Administration, a practice questioned by some since both the effects of the violation and the expense of the inspection fall on the state. UP's hazardous materials fines have gone from zero to 39 percent of their total fines between 1984 and 1988.

Dennis Timmermann, Assistant State Legislative Director of the United Transportation Union, which represents switchpersons, brakepersons, and conductors, doubts that the railroad has significant financial incentive to repair safety violations. "The NPSC and the FRA inspectors are actually doing the railroads' inspection work," said Timmermann. "It's a classic case of taxpayers doing the corporation's work."

The company doubts the need for an external mechanism to assure complete reporting of accidents and injuries. "The mechanism that keeps us honest is our own business sense," said John Bromley. "In terms of public assurance, I think any company lives on its reputation...as a good company or a bad company. I think our reputation at UP is very good. The UP is well-regarded as safe."

The Office of Technology and Assessment has said, "Federal accident records suffer from significant underreporting and do not provide an accurate assessment of the level of safety in the transportation of hazardous material."

Last summer, a safety study by the General Accounting Office was cited by the UTU as supporting their accusations that the reliance on industry self-reporting was flawed. The GAO found that five railroads it examined, including the Union Pacific, were either underreporting the number of injuries and accidents, understating the number of lost workdays and the estimated cost of damages due to train accidents or not maintaining sufficient information to allow independent verification of the accuracy of its reporting.

The UP's "light duty" program allows injured workers to go back to work, but in a less demanding role, such as an office. The union sees this as a way of making their statistics on lost workdays look better.

UP inspects many of its own accidents without involvement by the police, the National Transportation Safety Board, or any other public agency. The NTSB was empowered by Congress to investigate major transportation accidents and recommend

ways to improve safety in the future. It fails to investigate most of the smaller incidents.

UP also is comfortable in the role of emergency drilling for small towns. Says Bromley: "A little town that's got a volunteer fire department doesn't have to have space suits and a guy that knows all about chemicals, all he has to know is who to call and what to stay away from." Who do they call? "They call our train management centers, our yard masters."

One thing the rail unions and UP agree on is the value of a drug-control program called Operation Red Block. Bromley described the situation: "Our men don't want to work with people who are going to endanger them.... We've given them some avenues to help their buddy without turning

him in and costing the man his job. Operation Red Block has been very successful, probably one of the reasons that it has been is because it's come from within the union(s) (UTU--trainmen, and BLE--engineers). It wasn't something the company imposed on them. And it's worked well."

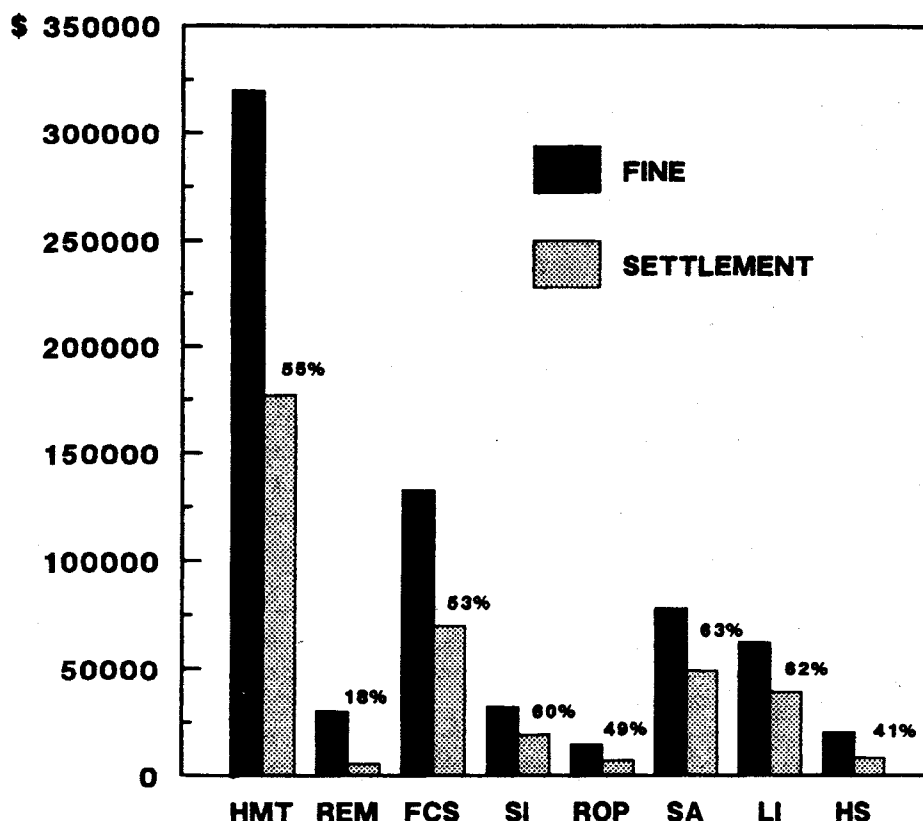
Asbestos and Hearing Loss

Thousands of railroad workers who are no longer employed are discovering damages from asbestos, noise and toxic chemicals, and the railroads are facing increasing numbers of liability claims under the Federal Employers' Liability Act, FELA. (See related story, *next* page.) If FELA were to be replaced by workers' compensation, these

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Union Pacific Railroad Safety Cases Closed for Fiscal Year 1988

SOURCE: Federal Railroad Administration -- Office of Chief Council, Safety Division



HMT: Hazardous Material Regulation (failure to handle hazardous material properly)

REM: Rear End Marking Device (defective end-of-train marking device)

FCS: Railroad Freight Car Safety Standards (defective axles and wheels)

ROP: Railroad Operating Practices (failure to provide blue flag protection for employees)

SI: Signal Inspection Act (not reporting signal failures)

SA: Safety Appliance Act (hand brakes, grab irons, uncoupling levers)

LI: Locomotive Inspection Act (faulty brakes)

HS: Hours of Service (failure to report to FRA train crews engaged in the movement of trains after 12 hours)

Dick Dinsmore, who serves on the board of directors of the Nebraska Observer, is a private attorney who represents injured railroad workers. This story, however, was initiated and written entirely by the author.

Mr. Dinsmore helped only in suggesting that certain people be interviewed.

Of the hazardous materials fines paid industry-wide in 1988, the Union Pacific's share was 45%; its share of number of carloads was 22%. Last April, the UP settled with the FRA for 74 cases going back to 1985. The fines were assessed at \$653,425.00 and settled at \$328,675.00. "The big majority of the upsurge," according to UP's John Bromley, "was due to the increase in hazardous materials fines."

Injured Worker Left Angry at Railroad

Larry Guenther tells a story of anger and pain.

"The money's good, but they work you to death, they physically and mentally exhaust you. You might not work 2 or 3 days at a time, and then 8 hrs on, 8 hrs off. You don't know when you're going. You work in all kinds of adverse weather...(Much) of the equipment, like switches, cars, etc., (is) unsafe. Sometimes it would take two guys to throw a switch because they wouldn't maintain them. You turn it in and they just cover it up. Nothing's done until it's too late, someone's either hurt or killed. They make it sound like it's all your fault. When you do have a claim they try to starve you out, and if it hadn't been for my attorney it might have worked. I'd have lost my house and everything I have. I completely dried out all my

savings, and my wife and two kids suffered too. There were a couple of Christmases where we couldn't afford to get anything."

"The worst thing is it left me with a tremendous amount of hate for the railroads. Once you get hurt they act like you're a plague. All it would have took was about a dollar and a half piece of chain to make that door work. They knew we had to open that door manually.

The railroad hypes safety, but they don't practice it. They have a 24 hour line to call in safety hazards on the tracks. I called them about 4 or 5 times. Six months later the problems still weren't fixed. I was working a local out of Columbus that went to Schuyler. Along the tracks by a grain elevator there were deep ruts, washouts, that could injure

you if you stepped in one. Another railroad official said there was nothing they could do about it because they didn't have the manpower."

Guenther injured his back, as do many railroaders. He was working as a conductor for the Union Pacific Railroad in February, 1984, when he got hurt trying to open a large metal warehouse door at the plant of Douglas & Lomason. The chain that operated it had broken, Guenther reported it, UP was responsible for assuring it had been repaired before they asked their people to use it again. Guenther said, "I notified them 2 or 3 times, as did others.

Guenther had two herniated disks. He worked on and off for a year, but pain often kept him from his job. He sought help from

doctors, but neither company doctors, nor his family doctor diagnosed the problem right away. Finally, he consulted a doctor referred to him by his lawyer who diagnosed a herniated disk from the CAT scan previously done by the UP doctor; later his father's doctor diagnosed another herniated disk. The UP doctor was still saying nothing was wrong. By then Guenther had seen an attorney, Dick Dinsmore, and was preparing to file a suit against the railroad.

Guenther finally settled the suit and got on with his life. He had spent a year and a half in school at Milford and is now a draftsman for manufacturer of farm equipment. He makes about a third of what he did before.

He still has the pain, still can't lift and had to give up baseball and softball.

U.P. Seeks Greater Volume of Hazardous Cargo

How to run a safe rail system becomes most serious when considered in the context of the likelihood of increased future shipments of hazardous materials.

The UP is trying to increase its market share of hazardous materials. Leading the industry, they shipped 272,000 carloads in 1987. UP's John Bromley explained: "We think we've got a safer railroad...the technology's improved...we're able to continue putting capital into our track and locomotives...we have a very active training program on how to deal with accidents...how to help the communities along our line.... We train fire departments...We are working with

shippers and car design and working with the federal government to improve safety standards...Union Pacific has been a leader in asking for stronger car design requirements."

Union Pacific was fined a total of \$320,000.00 by the FRA for violations cases closed in FY 1988. After negotiation, they paid \$176,800.00, or 55%. Thirty-nine percent of the total paid went to hazardous materials fines, which was then the most the company had paid in this category in the last five years. One fine for \$173,000, dated 9/30/88, was the largest hazardous materials fine of the year. The reason given by the FRA for

the fine was because "on various occasions (they) transported hazardous materials without the train crew having in their possession copies of the shipping papers; with improper descriptions on shipping papers; with cars containing corrosive material and flammable gas as the first through fifth cars from the engine."

Of the hazardous materials fines paid industry wide in 1988, the Union Pacific's share was 45%; their share of number of carloads was 22%. (See graph.)

In April, this year UP settled with the FRA for 74 cases going back to 1985. The fines were assessed at \$653,425.00 and settled

at \$328,675.00. "The big majority of the upsurge," according to Bromley, "was due to the increase in hazardous materials fines."

The UP currently operates what is called a "unit train" which weekly hauls 60 carloads of poisonous and explosive cargo between Freeport, Texas, and Midland Michigan, passing through dozens of cities including Houston, Little Rock, and Chicago. (UP brings it as far as a Chicago where the "Chessie"--CSX--takes over, bringing the train to its destination, the rail yard for Dow Chemical Co. at Midland, Michigan.) The train is commonly known as the Death Train. Each car holds up to 32,000 gallons of chemicals such as

-chlorine, a nonflammable gas that can kill if inhaled and burn the skin and eyes upon contact.

-phenol, a poison that can kill when breathed, swallowed or absorbed through the skin.

-butadiene, a highly flammable gas.

-styrene monomer, a flammable liquid

-hydrogen chloride, a nonflammable gas that can be fatal if inhaled or absorbed through the skin.

-dichloropropene, a flammable liquid that gives off explosive vapors.

No amount of safeguards against defective equipment could protect the public from the consequences of sabotage, or sheer stupidity, as could have happened March 22, 1988, when a truck driver in Sherwood, Ohio, played chicken with the Death Train. As reported in the Detroit News, the driver won by a hair, but had he lost, he could have caused a train wreck and an explosion huge enough to kill people for miles around.

Ninety percent of all rail fatalities are at rail-highway crossings or are related to trespassing. Congress has funded the program

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A Look at The Federal Employers Liability Act

FM

Death and injury on the railroad was far more common at the turn of the century than it is now. In 1888 a brakeman had one chance in five of dying a natural death. At the time, there was an oversupply of labor, and no welfare or unemployment benefits. The railroads were able to let injured men go and replace them with able-bodied ones waiting in the wings.

Congressional investigations into the plight of these workers resulted in the Federal Employers' Liability Act, FELA, whose purpose was to compensate workers for on-the-job injuries and, at the same time, motivate the railroad industry to take greater safety precautions. The first FELA was enacted in 1906 in the wake of increased effectiveness of organized labor. The railroads objected at the time, although today most industry spokespersons acknowledge that the FELA was necessary at that time.

Most other occupations are protected by workers' compensation, a no-fault system paid for by set contributions from the employer. FELA, which serves only railroaders, allows injured employees to sue, or settle without suing, based on employer negligence, including deficiencies in equipment or facilities. Workers' compensation pays according to a set schedule, but FELA awards allow the employee to recover for a variety of losses including pain and suffering, lost future employment opportunities, needed future rehabilitation and other factors specific to the individual.

What Others Say

Dennis Timmermann, Assistant State Legislative Director for the United Transportation Union, believes that the FELA in principle benefits both employer as well as employee; if the employer provides a safe workplace, there is no employer liability.

Union Pacific CEO Mike Walsh de-

voted his most recent monthly column in the company employee magazine *Info* to a discussion of the FELA. In that article Walsh complains that FELA often "removes the incentive for recovery," and refers to fraudulent and exaggerated FELA claims as possibly accounting for 10 percent of the total annual FELA expense to the railroad.

That kind of cynicism from management infuriates railroaders such as Denny Holland, Vice General Chairman of the United Transportation Union, Eastern District. Holland, whose family members include many railroad workers, recalls "uncles, great uncles, and my grandfather (who) lost their hearing and never got a penny, never even thought about it." Holland also points out that many workers died of asbestosis or wound up with artificial knees from constant pounding and were never compensated.

'My Job Was Only to Kill'

Salvadoran Thug Worked With U.S. Advisers

On Nov. 16, government military or paramilitary murderers butchered six Jesuit priests and two civilians at San Salvador's Central American University. True to a pattern that has held at least since the assassination of Oscar Romero, the atrocity followed warnings from the Jesuits from ruling ARENA party boss Roberto D'Aubuisson and other right-wing elements. The government of Alfredo Cristiani denied responsibility but the next day raided the human-rights-oriented Lutheran office and arrested 12 church workers. Other missionaries were fleeing for their lives.

That is the horrendous scenario the United States is underwriting in Salvador. Two days before the brutal murders, Washington expressed "full confidence" in Cristiani and promised to expedite the \$85 million in military aid slated for El Salvador this fiscal year — more military aid for a 10-year war that has already cost well over 70,000 lives and about \$4 billion in U.S. taxpayers' money. Congress made good on that promise Nov. 20.

—National Catholic Reporter

by Colman McCarthy

WASHINGTON—With expertise in slitting throats, Cesar Vielman Joya Martinez is skilled also in slicing wordy rhetoric. "My job was only to kill," the former Salvadoran death squad assassin tells me during a two-hour interview.

Joya Martinez, 28, was a member of the intelligence department of the First Infantry Brigade of El Salvador's Army, leaving last July. As he speaks in a monotone through a translator, his face is expressionless. His dark eyes show fear, as well they might. He is in the United States as a whistle-blower, offering Americans, whose government gives the Salvadoran regime about \$1.5 million a day in military and economic aid, the blood-drenched details on where part of the money goes.

Joya Martinez...slit throats, dumped bodies at night... and worked next to two U.S. advisers. "One of them," he says, "was from Texas, and had a desk a few meters from mine."

It went to him and other military goons, Joya Martinez reports. Claiming to have tortured and killed eight of his countrymen in the year he served the First Brigade, he explains that cutting throats or strangulation was more effective than shooting because bullet wounds leave ballistic evidence. Joya Martinez, a low-ranking night stalker who carried out orders from his military superiors who themselves were counseled by U.S. advisers, estimates that more than 70 killings of suspected leftists or leftist sympathizers were carried out in the first six months of 1989 by his First Brigade unit.

In July, Joya Martinez fled. After providing details of his work to human-rights organizations in Central America, he turned

up in Washington. In late October, his story was told on "CBS Evening News" and in the Washington Post. In the last two weeks, he has been getting into congressional offices to speak with foreign policy staff. The core of his message is that U.S. advisers, two of whom had desks in Joya Martinez' office and were writing checks to support the operation, were aware of the Salvadoran military's lethal methods of controlling dissent.

"I have come here to appear in any forum," Joya Martinez says, "to have my accusations tested against anyone else's word or the evidence. I have only the truth. I could have settled somewhere else and forgotten this. But I want to stop this planned, organized murder. I do not believe the U.S. advisers could not have known what we were doing... They funded everything we did."

Who's to be believed?

The commander of the First Brigade has labeled Joya Martinez a liar who acted on his own in killing people. The State Department denies that U.S. advisers knew or sanctioned the brigade's operations.

On the other side are those Americans who agree with Oscar Romero, the martyred archbishop who begged the U.S. government in 1979 not to send military aid to El Salvador, that no good would come of it. Ten years, \$4 billion and 70,000 deaths later, the archbishop's forecast has had accuracy beyond anyone's worst fears.

One of those befriending Joya Martinez and showing him around Washington is his translator, Allen Frankovitch, a California filmmaker whose 1987 documentary, "The Houses Are Full of Smoke," is about the death squads of Central America.

"I think his story is utterly credible," Frankovitch says. "It checks out with what the heads of Salvadoran intelligence agencies told me about how they operate. By speaking out, this man is risking his life. He could have just faded from view and said nothing."

This view is shared by a staff member of the Senate Foreign Relations Committee, with whom Joya Martinez spoke: "We found

no reason to doubt his information."

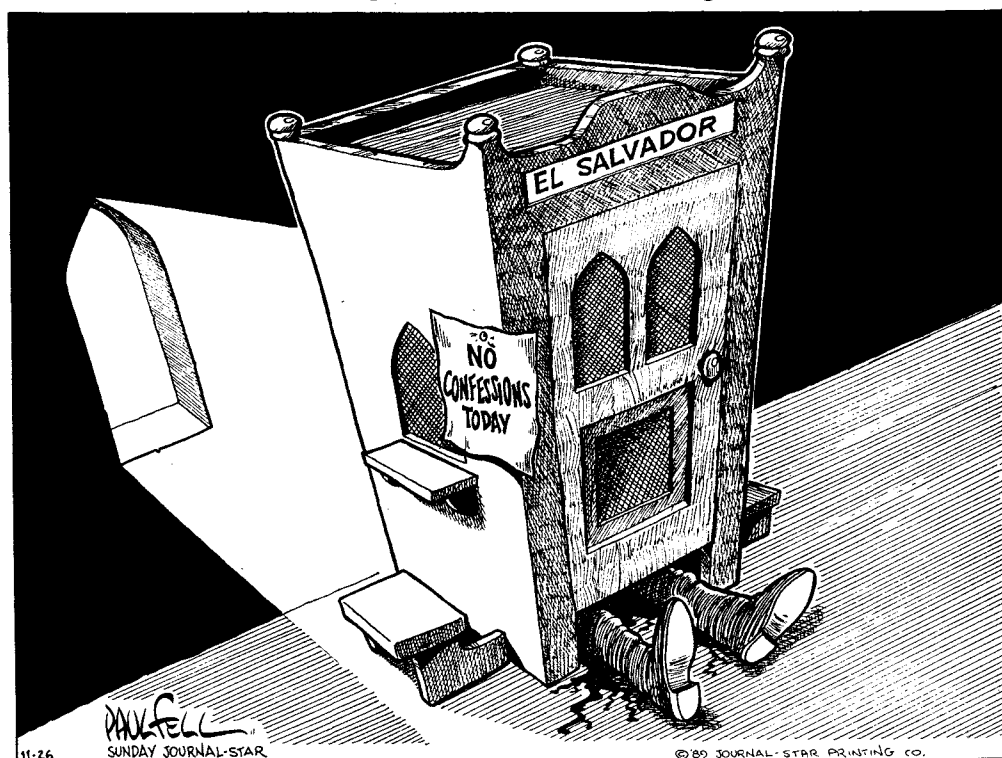
My initial reaction when interviewing Joya Martinez was one of disgust. Here was a thuggish, self-confessed killer speaking dispassionately of his war crimes. But, slowly, the monstrosity of his past actions because less the issue than the courage of his present ones—showing up in the United States to tell Americans what he had done to earn the money we had sent him. Our 55 military advisors in El Salvador aren't there to water burros in town squares. They are counselors in violence, educating El Salvador's poor in the arts of annihilating other Salvadoran poor.

Joya Martinez, in the lowest ranks, was one of them. He slit throats, dumped bodies

at night, had the proper papers to get through roadblocks and worked next to two U.S. advisers. "One of them," he says, "was from Texas, and had a desk a few meters from mine. We provided them with copies of all the reports from our agents on clandestine captures, interrogations.... But we did not provide them with the reports on the executions. They did not want to hear of the actual killings."

Days before a death squad killed Archbishop Romero in 1980, he called on young Salvadorans to lay down their weapons and refuse order to slaughter each other. Ten years later, Joya Martinez heeded the message.

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As Society of Jesus Calls for End to U.S. Aid to El Salvador

Jesuit Schools Should Get Off ROTC Gravy Train

Editor's note: Creighton University in Omaha has Army ROTC. Of its total undergraduate enrollment of about 5500, 63 students are ROTC cadets. These students receive scholarships of \$7,000 per year plus books, a living stipend, and, usually a free room from Creighton. The Army pays their instructors for teaching the twelve ROTC credit hours in the undergraduate curriculum.

by Colman McCarthy

WASHINGTON -- A few days before hell's gunmen murdered the six Jesuit priests in San Salvador, I received a letter from Father Tom Donnelly of New Orleans. He has been a Jesuit for 51 years. In 1956-57, I was in his freshman English class at Spring Hill College, a liberal arts school in Mobile, Ala., and the finest, for my student loan money, of the Jesuits' 28 American colleges and universities.

Father Donnelly, who taught us freshmen with the patience of a drover of slow-witted sheep, wrote a newsy letter that brought me up-to-date with his life. He is a parish priest again, assigned to the Immaculate Conception church in downtown New Orleans: "I'm back where I blessedly started. Every three months I hear about 2,000 confessions. It's a great consolation to lift the burdens off the backs of humble and brave people who come. Knowing me, you will pray. I do for you. God is our best and changeless friend. May He keep us that way."

I can't imagine that the slain Jesuits of San Salvador had lived any differently from that creed of service and faith. In the contagion of belief, the martyred priests rejected the role long assigned to Latin American clerics, of being only ornaments in the church's

spiritual decor.

That rejection began in 1968 when Pope Paul VI, in Medellin, Colombia, rallied the Latin church to the side of the oppressed. Priests and nuns who heeded the message were marked. Archbishop Helder Camara of Brazil spoke for them: "When I feed the poor, I am called a saint. When I ask why they are poor, I am called a communist."

An American Jesuit in San Salvador -- a Camara kind of priest -- wrote to his order about the fighting in the city on Nov. 15, the day before his brother priests were killed: "Today I stood on the balcony of the office of Monsignor Rivera y Damas (archbishop of San Salvador) while waiting for him to sign the letter opening various parishes as refugee centers. I will never forget the image of those push-and-pull airplanes, plane after plane, circling, diving and jettisoning their rockets into the heavily populated areas of Zacamil and Mejicanos. At the same time a C-47 Hercules was machine-gunning down on those same populations. Both were doing so from such high altitudes, which would make 'accuracy' all that much more difficult. The noise of destruction and death was terrible. The colonel in charge of the High Command state on television last night that the Air Force has not bombed, and will not bomb, civilian populations. That is simply a lie. They have been doing it for two days."

Leaders of the 10 Jesuit provinces in the United States have issued a statement to Congress calling for an "end to all U.S. military assistance to El Salvador. Such military assistance only encourages the violent elements in El Salvador to continue their attempts to prevail militarily."

The morality of this demand would be

taken seriously if U.S. Jesuit leaders themselves weren't also seeking and receiving military aid. From Georgetown University to Spring Hill, many of their campuses embrace ROTC programs. The schools' coffers swell with Pentagon money to run them. How can Jesuits, whatever their current grieving, tell Congress to dispatch no military money and equipment to El Salvador, while keeping open the spigot to their own treasuries? Jesuits in El Salvador shaped an opposition church. Here, too many Jesuits are part of the cooperation church.

Exceptions exist. Richard McSorley, a Jesuit priest at Georgetown, asks: "Where in this nuclear age do we find in Christian universities the peace message of the Gospel? ROTC is the war message. That is so loud and clear that the peace message is lost."

Daniel Berrigan, a Jesuit for 50 years and teaching courses in nonviolence this semester at Loyola University in New Orleans, writes in an essay on "game playing with imperial power": "In past years, I have been invited to the campuses of at least five religious orders, including my own: Vincentians, Holy Cross, Franciscans, Benedictines, Jesuits. On each campus, theology looms large; on each campus also, ROTC.... The military is ensconced, peddles its wares, offers military scholarships. One might conclude, were one not cognizant of the cover-up, that all Catholic universities were conducted, founded, funded, ideologized, by a single hard-headed Western male realist, in whose heads guns and butter, Eucharist and uniform, rested easily."

As they tell Congress to stanch the flow of military money to El Salvador, leaders of

U.S. Jesuits ought to call in McSorley and Berrigan for a lesson in consistency, with a follow-up talk in costly dissent. Otherwise, someone in Congress may be pushed to candor's wall: Stop shaking your finger at us with one hand while keeping open the palm of the other.

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Marchers Decry U.S. Support of Salvadoran Military Regime

Pledge of Resistance affiliates across the United States have launched a wave of protest and civil disobedience in response to the U.S.-financed and -directed attack on the people of El Salvador. Tens of thousands of people have publicly repudiated this policy by taking part in nonviolent blockades and occupations of Congressional offices and military bases, marches, rallies and interfaith services at U.S. federal buildings across the country.

The Pledge of Resistance is sponsoring the following Omaha activities Dec. 3:

Dr. Joel Gajardo, past secretary of Latin American affairs for the National Council of Churches, will speak on El Salvador at St. John's Church, Creighton University, at 6 p.m.

A flashlight march from St. John's Church to the Federal Building, 215 N. 17th Street, will follow the talk at about 7:30.

Dim Views of U.S. Ecology Taken

Continued from page 6

Richland, Wash. Site

"Our efforts during the past two years to regulate these (mixed) wastes have been met with reluctance by U.S. Ecology despite the facility's receipt of organic wastes."

"U.S. Ecology has proven hard to work with on this (mixed waste) issue and has lobbied hard to avoid environmental regulation."

--State of Washington, Department of Ecology

California Site Under Development by US Ecology

"U.S. Ecology has shown repeatedly throughout its application and operations of this (low-level disposal) type, that they will do only what is necessary to keep operating."

--State of California, Department of Health Services

Greater Volume of Hazardous Materials to Ride Rails

Continued from page 9

"Operation Lifesaver" which supported crossing upgrades and greater public awareness. But no one believes this program has made a serious dent in the problem. And, according to the Railway Labor Executives' Association, "there are no federal regulations requiring adequate maintenance, inspection and testing of grade crossings."

UP and Dow Chemical have developed a program called TransCAER (Transportation-Community Awareness and Emergency Response), to prepare communities for disasters. They go into towns, conduct drills and develop emergency plans for local fire departments. The put plans in place for dealing with accidents. UP's Bromley says that the communities "love it" and have responded very well.

Notifying Communities

The Union Pacific does not notify

communities when hazardous waste is coming through, because it happens too often. But the Department of Energy is supposed to notify the state when nuclear waste is coming through. In 1986 when the nuclear waste from Three Mile Island was headed north on a UP train from Kansas into Nebraska, then Governor Bob Kerrey flew to the border to stop the train until he received the required notification.

In 1988 UP hauled 22% of hazardous cargo, but paid 45% of hazardous materials fines.

Union Pacific's Bromley says the state was notified. "The Governor was personally notified. I think he was embarrassed by a news call (revealing that) he didn't know it was coming at that particular time and place. That embarrassed him so he had to

respond....The states were notified it was coming through and when. And with that notable exception it worked very well."

The Union Pacific intends to increase its share of the nuclear waste hauling market, but according to Bromley, isn't anticipating that this will bring large increases in revenue, since the volume of the cargo is small. With the TMI train, he believes, the important thing was that the cars were safe, probably the safest transportation vehicle in the country.

The Nebraska Public Service Commission's Charles Faulder knows of no federal standards for low-level nuclear waste, nor for spent nuclear fuel rods. But present trends suggest that the number of rail shipments of spent nuclear fuel will continue. Congress' Office of Technology Assessment estimates that by the year 2000 there will be one to five rail accidents per year involving such shipments.

Return of toll roads makes Economic Sense

by Wallace Peterson

Sometimes things move in circles. An idea whose time has passed is reborn as an idea whose time has come -- or is about to come.

Francis Moul in a recent article in the Syracuse Journal-Democrat pointed to such an idea -- the return of the toll road.

Replacing the idea of a "freeway" with a "payway" won't be instantly popular. Nevertheless, it is an idea that makes good economic -- and even political -- sense.

Let's face it. Politically, we remain stuck with Ronnie's philosophy that about the worst economic fate that can befall Americans is to pay taxes. "Don't worry, be happy," borrow the money, and let tomorrow look after itself.

Since 1981 the federal government has lived by this philosophy, rolling up a gross debt now approaching \$3 trillion. On a per-person basis that's approximately \$12,146 for each man, woman or child in the U.S.

Some day the bills will come due. A part of the bill due in the decade ahead is the repair and rebuilding of the nation's "infrastructure." A word beloved by economists, "infrastructure" refers to the network of roads, bridges, rail lines, waterways, water and sewage systems, and other basic facilities, without which little could be produced, transported or exchanged.

As Francis pointed out, the bill alone for highway and bridge repairs over the next 20 years is estimated to be at least \$600 billion. Where is the money coming from?

Historically, we have paid for streets, highways and bridges mostly by a tax on the users -- the gasoline tax. This reflects the "benefit principle" in action, the idea that those who benefit directly from a public service ought to pay for it. This is a sound principle of public finance, streets and highways being one area where it can be applied readily.

The most sensible way to pay for the

coming repair and reconstruction costs of the nation's highways -- especially for the Interstate system -- would be a hefty increase in the tax on gasoline. As far as gasoline is concerned, we are probably the least-heavily taxed of any modern, automobile-using nation.

But with George read-my-lips-no-tax-increase in the White House, this simply won't fly. And the Democrats are so terrorized by Lee Atwater and his go-for-the-jugular PR tactics that they won't do anything.

A second-best alternative would be to get the monster long-haul trucks of the Interstate system and back onto the rails -- piggyback or otherwise -- which is where they belong. It is not passenger automobiles that are beating the life out of the highways; it is the trucks, ever longer, ever heavier.

This won't happen either. The political power of the Teamsters and the trucking industry is simply too great. As far as the

Administration is concerned, even if it had the wit to come up with a reasonable national transportation policy involving all elements -- rail, air, roads and waterways -- it doesn't have the political courage to challenge the status quo.

So that leaves going back to the toll road to pay for costs we cannot escape. There is going to be a lot of grumbling about this, you can be sure. But it is, perhaps, the only way left to go.

A recent story in The Washington Post pointed out that 17 states -- states scattered across the entire nation -- have toll road projects under consideration. According to the Post story, 4,700 miles of toll roads exist in 26 states.

We have always had to pay for our roads and highways in one way or another. What we have done in their use is to treat them as if they were a "free good." This era is coming to an end.

Railway Safety and the Corporate Mindset

Continued from page 8

people might not be able to recover.

Bromley said, "...asbestos was considered a miracle product; it was deemed safe by everybody. Certainly the railroad didn't go into it knowing asbestos was hazardous to anybody nor did anybody else...I can't believe anybody could say seriously that we knew in the '20s, '30s, or '40s that asbestos had that risk as a health danger."

But the Illinois Public Action Council documents industry awareness of the health hazard and carcinogenic properties of asbestos, citing "Minutes of the Proceedings of the American Railway Association, Medical and Surgical Section," 1932, and the lawsuit "Dale vs. B & O Railroad." (The American Railway Association is the organization for railroad executives.) The Illinois public interest organization wrote "As early as 1935 the (American Railway) Association set forth appropriate measures to be taken to avoid the inhalation of this dust and protect their employees from its harmful effects. Yet none of these measures were taken until hundreds of FELA suits were filed in the last several years, almost half a century later."

Hearing loss is also a subject for litigation. Bromley recalled that many of these suits came about because of damage incurred in retarder yards, where retarders are placed on the rail to compress against wheels to slow them down. The UP, Bromley said, changed the kind of retarder that was used to one that is not as noisy as the older ones and also required hearing protection around that kind of equipment. Other kinds of hearing loss come from train whistles and

air brake pipe exhaust.

The Illinois Public Action Council maintains the effects of noise were known long before the industry took protective action. The term "boiler maker's ear," common since the early 19th century, describes this workplace hazard. As with asbestos exposure, the industry did not move to protect employee hearing until faced with FELA suits, the Illinois Public Action Council maintains.

Should the FELA Be Repealed?

Can the industry keep the rails safe without oversight? This is not an academic consideration, since Union Pacific is now leading the other railroads in an attempt to change federal legislation mandating that rail workers be covered by FELA. In its place they are pushing workers' compensation, a no-fault plan. The key features of FELA are 1) that the injured worker must prove employer liability, and 2) that damages are based on individual circumstances, including the employees lost earning capacity. FELA generally produces higher settlements than workers' comp, although if the employee is proven to be completely liable for the accident, it is possible that he/she will get nothing.

Labor and some insiders believe that FELA is the only thing left motivating for safety. Denny Holland, Vice General Chairman of the United Transportation Union, Eastern District, believes that the railroads have never policed themselves and never will. "All we have between ourselves and chaos is FELA," he said.

The Union Pacific's John Bromley speaks

for the industry when he asks "Why are we different than ConAgra, United Airlines or Peter Kiewit?" referring to railroads' unique position of being required to compensate for injuries according to employer liability. Other industries, as dangerous or more so, cover their employees with workers' compensation. Bromley also questions the desirability of the built-in adversarial relationship: "The lawyers are the ones who are really benefitting; they are the ones who are getting the most money out of it." (Only 15 percent of FELA cases are handled by attorneys; the percentage of Workers' Comp cases employing attorneys varies from state to state, but Babcock and Oldfather cite studies that show that 26 percent of Workers' Comp cases in Michigan in 1978 were litigated; 24.4 percent of Illinois cases (no year given) involved attorneys, and in a California study, 90 percent of the injured workers' comp employees retained an attorney.)

Still, a case can be made for the inherent danger of railroading. Coal mining, long considered the most dangerous occupation, has a higher mortality rate, but railroading has a higher rate of non-fatal injuries, according to government documents cited in *The Federal Employers' Liability Act: No Need For Change* by Oldfather and Babcock. And, according to statistics from the National Safety Council in *Railroading the Public Safety*, a passenger on a train is more likely to be killed in an accident than a passenger on a commercial airliner.

FELA was enacted 80 years ago not only to provide compensation for injury, but also to serve as an incentive for safety. No one questions that since then the indus-

try has gotten a great deal safer. For example, in 1893, before FELA, a railroad switchperson's life expectancy was only seven years after he became employed.

Does a Corporation Have a Conscience?

We can no longer assess rail safety by merely looking at accident statistics. These statistics show that rail workers are in more danger than other occupations (except farming and mining) and that the public is in danger from rail crossing accidents.

Today, there are matters of compensation for past problems such as asbestos, which have only begun to be dealt with. In a similar category are hearing loss and diesel fume damage. The profit motive will never cause the railroads to go looking for all victims of old injustices.

Even more important, however, is the question of how the bottom line will affect industry responsibility for the potentially catastrophic liability of hazardous cargo.

Chief Justice Marshall, in *Dartmouth College vs. Woodward* in 1819, gave the corporation its classic formulation: "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the character of creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created."

What the corporation described by Justice Marshall lacks -- a conscience -- may be more important than what it has.